

DISCIPLINARY ACTION

PRIVATE ADMONITION. Board Case No. 12, 2007. Effective Date: August 17, 2007.

A Delaware lawyer was privately admonished for violation of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). The private sanction was offered by a panel of the Preliminary Review Committee ("PRC"), and imposed with the consent of the lawyer.

Rule 5.3 states, in part, that in employing non-lawyer assistants, "a partner in a law firm shall make reasonable efforts to ensure that the firm has . . . measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; a lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyers." The lawyer violated **Rule 5.3** by failing reasonably to supervise non-lawyer assistants, with respect to the preparation of pleadings submitted to the Superior Court on behalf of lenders in default judgment/mortgage foreclosure cases ("Lev Facs"). This disciplinary matter was opened based upon a judicial referral from the Superior Court to the ODC regarding Lev Facs filed by the lawyer's firm which included improperly calculated fees, costs and other charges. At the request of the ODC, the Lawyers' Fund for Client Protection ("LFCP") conducted an audit relating to the firm's Lev Facs and accounting compliance.

As aggravating factors, the PRC considered the lawyer's substantial experience in the practice of law and prior record of private discipline. In mitigation, the PRC considered (1) the remoteness of the prior private discipline; (2) the absence of a selfish or dishonest motive; (3) the lawyer's cooperation with the Superior Court in its internal review of the Lev Facs and the Court's temporarily enhanced scrutiny of Lev Fac filings by the firm, and the lawyer's cooperation with the ODC; and (4) the remedial measures undertaken by the firm and implemented by the lawyer to avoid a recurrence of the problems with calculations of fees, costs, and other charges in Lev Fac pleadings filed in the Superior Court.

The lawyer was required to pay the costs incurred by the ODC and LFCP.